

AUSTRALIAN CAPITAL TERRITORY

No. 4 of 1980

An Ordinance to amend the *Court of Petty Sessions Ordinance 1930*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this eleventh day of March 1980.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

COURT OF PETTY SESSIONS (AMENDMENT) ORDINANCE 1980

Short title

1. This Ordinance may be cited as the *Court of Petty Sessions (Amendment) Ordinance 1980*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Court of Petty Sessions Ordinance 1930*.²

Commencement

3. This Ordinance shall come into operation on a date to be fixed by the Minister of State for the Capital Territory by notice in the *Gazette*.

Interpretation

4. Section 5 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-section:

"(2) A reference in this Ordinance to a certified copy of depositions or to a certified copy of a statement made by a person in reply to the question referred to in paragraph 92 (1) (ii) shall be read as a reference to—

- (a) if a record of the depositions or statement was made in accordance with sub-section 54A (2)—a transcript of the record certified in accordance with sub-section 255B (2); or

- (b) if the depositions were or the statement was taken down in writing and signed in accordance with sub-section 54A (3)—the depositions or statement as so taken down and signed.”.

5. After section 54 of the Principal Ordinance the following section is inserted in Division 1 of Part V:

Recording of proceedings

“54A. (1) In this section, unless the contrary intention appears, ‘deposition’ includes—

- (a) a statement made by an accused person in reply to the question referred to in paragraph 92 (1) (ii); and
- (b) a statement made by or on behalf of a defendant under sub-section 123 (4),

but does not include a written statement admitted in pursuance of section 90AA.

“(2) Subject to sub-section (3), a record of the depositions of a witness in any proceedings shall be made—

- (a) by means of sound-recording apparatus; or
- (b) if the Court so directs, by means of shorthand or any similar means.

“(3) Where the Court so directs, the depositions of a witness in any proceedings shall not be recorded in accordance with sub-section (2), but shall be taken down in writing, and, after being read over to the witness or given to him to read, signed by the witness and the Magistrate constituting the Court.

“(4) The Clerk shall have the custody of any record of depositions made in accordance with sub-section (2).

“(5) Subject to section 255B, the Clerk may cause to be erased the record of the depositions of a witness recorded by means of sound-recording apparatus and the record of any other part of a proceeding made by means of sound-recording apparatus after the expiration of 7 years after the date of completion of the proceedings in which the record was made.

“(6) This section applies to and in relation to proceedings before a Magistrate as if a reference to the Court were a reference to a Magistrate.”.

6. Section 60 of the Principal Ordinance is repealed and the following section substituted:

Record of proceedings and transcript

“60. (1) Where a record made by means of sound-recording apparatus, shorthand or similar means is produced out of the custody of the Clerk and the record purports to be a record made in accordance with sub-section 54A (2) of the depositions of a witness in any proceedings, the record is evidence that that person made those depositions in those proceedings.

“(2) Where—

- (a) a sound-recording is produced out of the custody of the Clerk; and
- (b) the sound-recording contains a record of comments that purport—
 - (i) to have been made at the same time as a sound-recording made in accordance with sub-section 54A (2) of the depositions of a person in any proceedings; and
 - (ii) to have been made for the purpose of identifying the proceedings, voices recorded on the last-mentioned sound-recording or any other matter or thing so recorded,

the first-mentioned sound-recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

“(3) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with sub-section 54A (2) of depositions made by a person in any proceedings; and
- (b) the document bears a certificate that purports to be a certificate given in accordance with sub-section 255B (2) or 255C (6),

the document is evidence that the person made those depositions in those proceedings.

“(4) Where a document—

- (a) purports to be the depositions of a witness in any proceedings as taken down in writing and signed in accordance with sub-section 54A (3); or
- (b) purports to be a copy of the depositions of a witness in any proceedings as so taken down in writing and signed and bears a certificate that purports to be a certificate given in accordance with sub-section 255C (6),

the document is evidence that the witness made those depositions in those proceedings.”.

Person about to leave Territory may be ordered to be examined or produce documents

7. Section 67 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

“(2) The taking of depositions before a Magistrate under sub-section (1) is a proceeding for the purposes of section 54A.”.

Depositions to be delivered to the Clerk

8. Section 69 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Where depositions are taken before a Magistrate in pursuance of section 67 there shall be delivered to the Clerk—

- (a) the record of the depositions made in accordance with sub-section 54A (2) or the document containing the depositions as taken down in writing and signed in accordance with sub-section 54A (3); and
- (b) any documents produced to the Magistrate.”.

Exhibits

9. Section 129 of the Principal Ordinance is amended by omitting sub-section (1).

10. After section 255A of the Principal Ordinance the following sections are inserted:

Clerk to give directions for preparation of transcript

“255B. (1) Where—

(a) in the case of proceedings—

- (i) under the *Maintenance Ordinance 1968*;
- (ii) in which a person charged with an indictable offence is committed to take his trial before the Supreme Court;
- (iii) in which evidence is taken in pursuance of a request referred to in section 23A;
- (iv) before the Court under the *Compensation (Commonwealth Government Employees) Act 1971*; or
- (v) before the Court under the *Workmen's Compensation Ordinance 1951* (other than prosecutions for offences against that Ordinance),

a record has been made in accordance with sub-section 54A (2); and

(b) in the case of any other proceedings, an application has been made, in accordance with section 255C, for a copy of a transcript of depositions of which a record was made in accordance with sub-section 54A (2),

the Clerk shall give such directions as he considers necessary for ensuring that a transcript of the record is prepared and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the Clerk.

“(2) Where a transcript of a record is prepared in accordance with directions given under sub-section (1), the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Clerk.

Clerk to furnish transcript or copy of certain records

“255C. (1) Subject to this section, where a record of any proceedings is constituted by:

- (a) a sound-recording made in accordance with sub-section 54A (2);
- (b) a shorthand or similar record made in accordance with sub-section 54A (2);
- (c) writing taken down in accordance with sub-section 54A (3); or
- (d) a written statement or statements in accordance with section 90AA,

a person may make application to the Clerk for a copy or a transcript, as the case may be, of all or part of that record.

“(2) A person, not being a party to the proceedings, is not entitled to make an application under this section in relation to a record made in those proceedings unless he has satisfied the Clerk or a Magistrate that he has good reason for so applying.

“(3) Where an applicant under sub-section (1) is a person who is not or was not a party to the proceedings to which the record relates, a copy of the record or a transcript or a copy of the transcript of the record shall not be delivered to the applicant unless he has paid the prescribed fee.

“(4) Where a person referred to in sub-section (3) makes an application for a transcript which has not been prepared, the Clerk may, before causing a transcript to be prepared, require him to deposit with the Clerk on account of the prescribed fee an amount which, in the opinion of the Clerk, does not exceed the amount of the fee payable.

“(5) Subject to sub-sections (6) and (7), where the Clerk receives an application in accordance with this section—

- (a) he shall, in the case of an application relating to depositions; and
- (b) he may, in any other case,

furnish to the applicant a copy of the record or a copy of a transcript of the record relating to those depositions or other matter, as the case may be.

“(6) The Clerk shall not furnish a copy of the record or a copy of a transcript under paragraph (5) (a) unless there is written on the copy a certificate under the hand of the Clerk stating that the copy is a true copy of the record or a true copy of a transcript of the record, as the case may be, produced out of the custody of the Clerk.

“(7) Nothing in this section requires the Clerk to furnish a copy of a transcript of any proceedings if—

- (a) the proceedings were recorded by means of a sound-recording made in accordance with sub-section 54A (2);
- (b) the application for the copy was made after the expiration of 7 years after the date of completion of the proceedings to which the record relates; and
- (c) the Clerk does not have the record or a transcript of that record in his custody.”.

References to certain records and provisions

11. (1) A reference in the Principal Ordinance as amended by this Ordinance to any form of record made in accordance with section 54A of the Principal Ordinance as amended by this Ordinance shall be read as including a reference to the corresponding record made in accordance with section 60 of the Principal Ordinance as in force at any time before the commencement of this Ordinance.

(2) A reference in the Principal Ordinance as amended by this Ordinance to a transcript certified in accordance with sub-section 255B (2) of the Principal Ordinance as amended by this Ordinance shall be read as including a reference to a transcript certified in accordance with the corresponding sub-section of section 60 of the Principal Ordinance as in force at any time before the commencement of this Ordinance.

(3) A reference in the Principal Ordinance as amended by this Ordinance to a certificate purporting to be given in accordance with sub-section 255B (2) or sub-section 255C (6) of the Principal Ordinance as amended by this Ordinance shall be read as including a reference to a certificate purporting to be given in accordance with the corresponding sub-section of section 60 of the Principal Ordinance as in force at any time before the commencement of this Ordinance.

(4) A reference in any other Ordinance made before the commencement of this Ordinance to section 60 of the Principal Ordinance shall be read as a reference to sections 54A, 60, 255B and 255C of the Principal Ordinance as amended by this Ordinance or to any one or more of those provisions as the case may require.

Transitional

12. Where, before the commencement of this Ordinance, an application had been made under sub-section 60 (6) or sub-section 60 (13) of the Principal Ordinance, that application shall, after that commencement, be dealt with as if it had been made under the corresponding paragraph of sub-section 255C (1) of the Principal Ordinance as amended by this Ordinance.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 20 March 1980.
2. Ordinance No. 21, 1930 as amended by No. 21, 1932; No. 17, 1934; No. 13, 1936; Nos. 5 and 28, 1937; Nos. 25 and 35, 1938; Nos. 20 and 22, 1940; No. 13, 1949; Nos. 7 and 12, 1951; No. 14, 1953; No. 12, 1958; No. 2, 1961; No. 2, 1966; No. 1, 1967; No. 25, 1968; No. 12, 1969; No. 15, 1970; No. 37, 1972; No. 48, 1973; Nos. 14 and 47, 1974; No. 42, 1976; Nos. 4, 34, 56 and 61, 1977; No. 46, 1978; Nos. 33 and 41, 1979.